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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

20 Cr. 677 (AT)

5 CHOLO ABDI ABDULLAH,

6 Defendant.

7 -----x

8 March 21, 2023

9 11:10 a.m.

10 Before:

11 HON. ANALISA TORRES,

12 U.S. District Judge

13  
14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the  
17 Southern District of New York

BY: KYLE A. WIRSHBA

17 Assistant United States Attorney

18 SABRINA P. SHROFF

19 Attorney for Defendant

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(Case called)

THE COURT: We are here in the matter of United States v. Cholo Abdullah. Would you make your appearances, please?

MR. WIRSHBA: Good morning, your Honor. Kyle Wirshba for the government.

MS. SHROFF: Good morning, your Honor. For Mr. Abdi Abdullah, who is standing to my right, Sabrina Shroff.

THE COURT: Please, be seated. I would like to hear a report on the status of discovery.

MR. WIRSHBA: Your Honor, discovery in this matter is complete. We provided discovery to prior counsel and made sure that Ms. Shroff has all of the discovery letters that we provided so that she can make sure that she has a full accounting of all of the discovery since she came on relatively recently.

THE COURT: Are you in agreement?

MS. SHROFF: Well, your Honor, I am somewhat concerned about the production of discovery in this case simply because prior counsel did not receive a copy of the criminal complaint, which I think would be part of the Rule 16 discovery. I wasn't sure why she didn't ask for it or why it wasn't previously provided to Mr. Abdi Abdullah and his counsel.

As the government has noted, I am recently appointed on this case. I am still trying to go through the productions to figure out if there is something else that I need to

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1 specifically request as being missing from the discovery.

2 THE COURT: Did you ask for the compliant?

3 MS. SHROFF: I did.

4 MR. WIRSHBA: Your Honor, the complaint was provided  
5 to Ms. Shroff when she asked for it and it was also provided to  
6 prior counsel. We provided Ms. Shroff with a stamped copy that  
7 had been provided to prior counsel.

8 THE COURT: It was a hard copy?

9 MR. WIRSHBA: No, no, it was a digital copy, your  
10 Honor.

11 THE COURT: A digital copy. So then you have the  
12 record of the e-mail that it was attached to or it was -- how  
13 was it provided? On a disk or?

14 MR. WIRSHBA: I'm not sure how it was provided to  
15 prior counsel. It was in one of the initial discovery  
16 productions but it was provided to Ms. Shroff by e-mail and,  
17 yes, we have a copy of that e-mail.

18 THE COURT: So if you would re-send that, please?

19 MR. WIRSHBA: We did, just recently.

20 THE COURT: You did?

21 MR. WIRSHBA: Ms. Shroff has it.

22 MS. SHROFF: I am quite certain that prior counsel was  
23 never provided with the criminal complaint.

24 THE COURT: But you have it now.

25 MS. SHROFF: I do have it now. I made a request and

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1 they provided it to me.

2 THE COURT: OK. Good. All right. So, you don't know  
3 whether you are going to make motions because you haven't  
4 finished yet with the discovery.

5 MS. SHROFF: Most respectfully, your Honor, I do not.  
6 I can detail for the Court why I would not be in a position to  
7 have finished reviewing the discovery or be ready to make  
8 motions. I think just a simple comparison of the time frame  
9 for which prior counsel was counsel of record, which I think  
10 was two years compared to not even having two full months on  
11 this case; I do apologize, but I'm not in a position to set a  
12 motion schedule.

13 THE COURT: Understood. So, when do you think that  
14 you might be finished with that review?

15 MS. SHROFF: Your Honor, Ramadan starts tomorrow. For  
16 the month of Ramadan, Mr. Abdi Abdullah does not wish to have  
17 legal visits and I think that's, of course, his absolute right  
18 and I intend to respect it fully. So, what my plan was to try  
19 to finish my review of discovery over that month, and then have  
20 about three weeks to speak to him after that and write a letter  
21 to the Court in about a month and three weeks or two months, to  
22 set out an agreed-upon motion schedule, if that would be OK  
23 with you, with the Court.

24 THE COURT: So when does Ramadan end?

25 MS. SHROFF: Ramadan ends on April 21st or 22nd of

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1 2023, depending on the setting of the moon.

2 THE COURT: So by the end of May you expect to have  
3 gone over the discovery with him?

4 MS. SHROFF: Yes, your Honor.

5 THE COURT: So are you looking for a June date?

6 MS. SHROFF: A June date would be fine with me, or I  
7 could at the end of May or early June work out a motion  
8 schedule with the government and present it to the Court.  
9 Either is acceptable to me, but I think a June date would be  
10 good.

11 THE COURT: So, what I would like to do is to give you  
12 a date by which you submit that letter.

13 MS. SHROFF: Sure.

14 THE COURT: May 30 for the joint letter from both  
15 parties. I would also like to set a trial date, perhaps the  
16 beginning of 2024. January of 2024?

17 MR. WIRSHBA: That's fine for the government, your  
18 Honor.

19 MS. SHROFF: Your Honor, I apologize. I really don't  
20 have my trial schedule with me but I think that sometime in  
21 early 2024 would be fine. I don't anticipate a further delay.  
22 I do want to tell the Court that I anticipate CIPA litigation  
23 in this case. I have briefly reviewed the classified discovery  
24 in this matter and I fully intend to make a Section 5 filing in  
25 this case.

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1 THE COURT: January 8 for trial, that's the date that  
2 I am going to set. So when I receive your May 30 submission,  
3 at that time I will also set a conference date.

4 MS. SHROFF: Your Honor, if I have any already set  
5 dates I will let the Court know by end of this week. I do  
6 apologize, I did not anticipate having access to my trial  
7 schedule right now but I will let you know.

8 THE COURT: You mean for the January trial date.

9 MS. SHROFF: Yes.

10 THE COURT: You will let me know if there is a problem  
11 with that.

12 How long do we think the trial will last?

13 MR. WIRSHBA: Approximately two to three weeks, your  
14 Honor.

15 THE COURT: OK. Is there anything else the parties  
16 would like to raise?

17 MR. WIRSHBA: Not from the government.

18 MS. SHROFF: Your Honor, I have substantial condition  
19 of confinement issues that I would like to raise with the  
20 Court. May I?

21 THE COURT: Yes.

22 MS. SHROFF: Thank you.

23 I just want to first note for the Court that  
24 Mr. Abdi Abdullah's presence at the last court appearance was  
25 not refused by him. He did not know he had a court date, he

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1 thought he was being brought to the SCIF, and I think it is  
2 important for his position and this Court to know that he would  
3 not in any way disrespect a court date. He was not told that  
4 he had court and that the letter that was sent to him by his  
5 prior counsel telling him that he had court arrived to him  
6 three weeks after he had actually appeared before you.

7 THE COURT: OK.

8 MS. SHROFF: So one, I wanted the Court to know that  
9 Mr. Abdi Abdullah is respectful of the Court's authority and  
10 had no disrespect, and when he was told he was being brought  
11 here for the court date, of course he came.

12 It is within that context that I want to tell the  
13 Court about certain difficulties that he is experiencing at MDC  
14 and it is impacting his legal representation, his ability to  
15 work on his case. I am happy to send to the Court all of the  
16 e-mails that I have sent on his behalf to the Bureau of  
17 Prisons, to the government, and I even reached out to Adam  
18 Johnson at regional -- because he used to be here, I'm sure the  
19 Court remembers -- to try and get his assistance.

20 So the first and most important thing is that  
21 Mr. Abdi Abdullah's family does not have access to the Internet  
22 for reasons that that are not relevant here or -- people have  
23 different levels of ability, financially and otherwise, to get  
24 Internet access. So I don't really know why, but before now  
25 nobody has raised with the government the issue of SAMs inmates

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1 having two VTC calls a month and phone calls. So if a  
2 defendant does not have the wherewithal to have VTC with his  
3 family --

4 THE COURT: I don't know what that stands for.

5 MS. SHROFF: Video conference, the video  
6 teleconference system.

7 So, a SAMs inmate can have a video meeting with his  
8 family and he can also have phone calls. In his case he is  
9 entitled to two hour-VTCs. Nobody has ever asked for those to  
10 be converted to phone calls because where his family lives,  
11 they don't have Internet access. I have asked the BOP, I have  
12 asked the government, and the only response I can get is we are  
13 working on it. OK? All I want is the VTC converted to a phone  
14 call.

15 THE COURT: That is perfectly reasonable.

16 MS. SHROFF: Right. So that's one issue.

17 The second issue is books. Mr. Abdi Abdullah is, like  
18 every SAMs inmate, on 24-hour solitary other than seeing his  
19 lawyer. That's it. Right? So the mind has to work. Books  
20 allow his mind to work. I send him books. They sit in the  
21 storage, they sit somewhere in the MDC, and I am sorry to tell  
22 this Court that I have spent more of my time e-mailing about  
23 books than working on legal issues in this case because it is  
24 the one thing that is upper most on Mr. Abdi Abdullah's mind  
25 because of the isolation that he is encountering at the jail.



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1 THE COURT: Can the prosecution see that the books are  
2 delivered?

3 MR. WIRSHBA: We have been trying to locate the books,  
4 your Honor. We have spoken to the deputy that reviews the  
5 books. They've confirmed they don't have them, we are waiting  
6 to hear back.

7 MS. SHROFF: That can't possibly be. I was there on  
8 Sunday. I was there on Sunday, the unit manager Mr. Bullock  
9 came to the door and said that the books are in the storage  
10 closet but the storage closet cannot be accessed because it is  
11 being refurbished -- but there is always some excuse.

12 THE COURT: So we know where the books are now.

13 MS. SHROFF: And he still doesn't have them. So my  
14 request to the Court is that. I ask the Court to please order  
15 a schedule. The BOP should have a schedule. The BOP should  
16 have --

17 THE COURT: A schedule of what?

18 MS. SHROFF: Within five days of receipt of a book  
19 they are to either approve it or disapprove and send it back to  
20 Amazon.

21 THE COURT: Are these English-language books?

22 MS. SHROFF: They're all English-language books. I'm  
23 happy to give the titles of the books to the government before  
24 I order them. There is nothing untoward about the books. I am  
25 happy to do any disclosure. I am happy to give them my Amazon

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1 account so they can see which books are sent, when they are  
2 sent, when they get to MDC. These are just books for the mind  
3 to work.

4 THE COURT: OK. So, is it Mr. Denton?

5 MR. WIRSHBA: No, Mr. Wirshba, your Honor.

6 THE COURT: I'm sorry, Mr. Wirshba.

7 MR. WIRSHBA: No problem.

8 THE COURT: Mr. Wirshba, so you can now tell the  
9 powers-at-be where the books are and they will have been  
10 reviewed by now or not?

11 MR. WIRSHBA: No, your Honor. My understanding is  
12 they need to go to FBI once they are received and then they are  
13 reviewed by FBI. That will make sure that FBI reviews them  
14 expeditiously. The location in the storage closet we will look  
15 into. With respect to -- I'm not aware of it being many books.  
16 Ms. Shroff has flagged one book and a subscription to a  
17 magazine that have not made it to where they need to go and we  
18 are already asking about that and looking into it.

19 THE COURT: So the nature of these books, is it  
20 Charles Dickens or is this something that's obscure?

21 MS. SHROFF: No, it is not obscure. They're off of  
22 the Internet, I have given Mr. Wirshba the title of the book,  
23 it is from Amazon.

24 THE COURT: Yes, but Amazon has all sorts of books.

25 MS. SHROFF: Fair enough, but --

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1 THE COURT: I am trying to gauge whether or not the  
2 FBI would need a lengthy period of time for their review.

3 MS. SHROFF: It is a historical book about a prophet  
4 in I think 1603 or some age-old prophet of the Islamic  
5 religion. It is a book whose title I have given to the  
6 government. I wrote to the BOP about this on February 25th,  
7 2023 at 9:20 a.m. about this book not being delivered.  
8 Nothing. Everybody is working on it expeditiously but he still  
9 doesn't have the book.

10 THE COURT: So, I would like to know how long it is  
11 going to take them to make their decision.

12 Is this something you could say is part of the Islamic  
13 canon?

14 MS. SHROFF: It seems to be a very innocuous book, it  
15 is just a historical book. I don't have any reason to believe  
16 that it has anything to do at all with incendiary language or  
17 terrorism or anything.

18 THE COURT: That's not my question. I am trying to  
19 gauge just how well-known the book is because if it's an  
20 almanac, something that folks know about, then it wouldn't take  
21 them very long to review.

22 MS. SHROFF: It is an almanac, it is one of six books  
23 so it is the historical -- the history of caliphates of Islam  
24 and the series is 1 to 6. He has 1, 2, they didn't give him 3;  
25 4 is somewhere lost in space, and I haven't ordered 5 and 6 yet

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1 but it is an anthology of books.

2 MR. WIRSHBA: The short answer is, your Honor, I don't  
3 know how well known these books are to the FBI but we can find  
4 out how long it will take them to review once it has gotten in  
5 their hands. It sounds like from Ms. Shroff he's received a  
6 couple of these books already in the anthology so hopefully  
7 that will speed things along because they're familiar with the  
8 set, but the bottom line is that FBI has not received no. 3 and  
9 still has not been able to review it yet. If the Court's  
10 question is how long it will take once it gets in their hands  
11 that is certainly something I can ask.

12 THE COURT: I would like you to make that inquiry, I  
13 would like you to describe the books for the FBI.

14 MR. WIRSHBA: Sure.

15 THE COURT: Because they very well may know them.

16 MR. WIRSHBA: Yes. I think we already sent them the  
17 title to make sure they didn't have it, so that is known to  
18 them already.

19 THE COURT: Yes, I would like to know, I would like to  
20 get a letter from you as to how long it is going to take them  
21 to make up their minds.

22 MR. WIRSHBA: Of course, your Honor.

23 THE COURT: But if he already has a couple in the  
24 anthology, does that mean they reviewed those already.

25 MS. SHROFF: Yes.

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1 THE COURT: Oh.

2 MS. SHROFF: And I gave the prosecutor the title. And  
3 I'm happy to do this. I'm happy to give the government a list  
4 of books that I plan to order so that the review can start  
5 before I order them. I'm happy to follow whatever process it  
6 is but the rule is Mr. Abdi Abdullah gets five books in his  
7 cell.

8 THE COURT: OK.

9 MS. SHROFF: So if he is finished with three, he can  
10 swap out those three and get three more. He has been asking  
11 for this book for three weeks now. Each time he gets another  
12 story. If they don't want him to have the book, please, just  
13 return it to me, it cost \$49, I will just buy him another one.  
14 But the problem is nobody responds with anything other than "we  
15 are working on it."

16 THE COURT: So, I would like you to make your inquiry  
17 and let the FBI know that I want a quick answer.

18 MR. WIRSHBA: Yes, your Honor.

19 THE COURT: What else?

20 MS. SHROFF: I ordered him a radio. I ordered him a  
21 radio so that he can -- you know, why one would order a radio  
22 for a client in SAMs, so that he is not sitting ruminating all  
23 day. It's been since February, since February, and  
24 Mr. Bullock, who is the unit manager, says 10-4. I will get  
25 the price for the radio and inform you of the price, February

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1 26th. I put money in so he could buy the radio. He still  
2 doesn't have a radio.

3 THE COURT: So it is available as a concession within  
4 the concessions at the prison?

5 MS. SHROFF: Yes. In fact, Unit Manager Bullock, he  
6 said he would approve it for Mr. Abdi Abdullah, he had no  
7 concerns, he approved the purchase. He still doesn't have the  
8 radio and he has the money. I made sure that Mr. Abdi Abdullah  
9 and his family have made sure that he has money.

10 THE COURT: So this should be able to be taken care of  
11 overnight.

12 MR. WIRSHBA: Well, your Honor, not necessarily. I  
13 understand that Mr. Bullock has approved it but I'm not sure  
14 that Mr. Bullock has the authority to approve whether or not  
15 this particular SAMs inmate can have a radio, I just don't know  
16 the answer to that. The first that --

17 THE COURT: Do you know in general whether SAMs  
18 inmates can have radios?

19 MS. SHROFF: I do. They have --

20 MR. WIRSHBA: Ms. Shroff is more experienced, I'm sure  
21 she has a view on that, but I do not know and I think the first  
22 thing we heard about the radio was this morning, so we will  
23 look into it but I do not know the answer.

24 THE COURT: OK. So you are going to figure out the  
25 answer with regard to the radio.

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1           What else?

2           MS. SHROFF: I just want to say that I have three  
3 other clients -- no, two other clients, all of them have a  
4 radio. If the government had read the SAMs they would know  
5 that there is no restriction on Mr. Abdi Abdullah having a  
6 radio. And you know what? If they don't want to give him a  
7 radio, please, just tell me so I can move on. But to say one  
8 thing to me and then have the government say another thing, it  
9 is not a clear process so all I ask the Court to do is to ask  
10 the government to come up with a process. I can give them the  
11 information and then they have 10 days to respond, but they  
12 have to respond with something other than we are working on it.  
13 It's unfair to Mr. Abdi Abdullah.

14          THE COURT: So when will you get back to me with  
15 regard to the radio?

16          MR. WIRSHBA: On the same time table I will get back  
17 to you about the book, your Honor.

18          THE COURT: All right. What else?

19          MS. SHROFF: I think that's it. I don't think we have  
20 any other issues to raise. I know that the visitation has  
21 caused certain issues for us but I have been in touch with  
22 Mr. Patton and Ms. Von Dornum and they are assisting me in  
23 trying to resolve the issue, as is Lieutenant Thompson in the  
24 84 unit where Mr. Abdi Abdullah is housed.

25          The delay is long, very long. Yesterday, for

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1 example -- I don't want to bore the Court with all of this but  
2 I waited for more than an hour downstairs, nothing to do with  
3 the BOP, no fault of the BOP; there is another lawyer using the  
4 room. They're entitled to use the room. But he has prayer at  
5 7:00, I get there at 4:30 but somebody is already in the room  
6 from having stayed there on the outcount, the room was  
7 occupied, you have to wait until they come out.

8 THE COURT: So it sounds like you have to get there  
9 earlier then.

10 MS. SHROFF: It wouldn't matter. I would have to sit  
11 with him through the outcount because they're on the outcount.  
12 But if I got there on the outcount -- I could get there  
13 earlier, he has restrictions.

14 THE COURT: What about earlier in the day?

15 MS. SHROFF: Right. He has prayer five times a day so  
16 I have to slot my visit between the prayer slots. So the  
17 solution by the government was for me to e-mail Mr. Bullock  
18 with my times of visits. I tried to do that but it did not  
19 resolve the problem. So, we are trying to get MDC to have a  
20 second legal room. As of now there is one legal room for five  
21 inmates so I am trying to resolve that.

22 I apologize, your Honor. I know conditions of  
23 confinement issues are tedious here, but unfortunately I really  
24 do believe that they are impacting how Mr. Abdi Abdullah is  
25 able to process information, to remain alert, to engage, and I



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1 do think that impacts his ability to work on this case. So,  
2 that's why I raise them with you.

3 THE COURT: So that brings our conference to a close.  
4 I look forward to hearing from the prosecution as soon as  
5 possible.

6 MR. WIRSHBA: Your Honor, if I may?

7 The government would seek to exclude time under the  
8 Speedy Trial Act. I don't believe your Honor set a conference  
9 date, you set a date for a letter. The government would seek  
10 to exclude time until January 8th, which is the date set for  
11 trial, to allow the defense to review the discovery, make any  
12 necessary motions and prepare for trial, and the parties to  
13 discuss a pretrial disposition.

14 MS. SHROFF: Your Honor, I think I ask the Court to  
15 consider excluding time until my letter is due to the Court. I  
16 think it's a better practice and also I think it is better for  
17 Mr. Abdi Abdullah to have --

18 THE COURT: But I haven't set an actual conference  
19 date when you will be in court. So, if your preference is that  
20 I set another conference then I can exclude time through the  
21 conference date.

22 MS. SHROFF: I think that would be better, your Honor.

23 THE COURT: OK. Tuesday, June 6, at 12 noon.

24 So, time is excluded under the Speedy Trial Act until  
25 June 6th. I find the ends of justice are served by excluding

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1 this time outweigh the interests of the public and defendant in  
2 a speedy trial because this will allow time for the defense to  
3 consider discovery, to decide whether to prepare motions, and  
4 for the parties to discuss a possible disposition.

5 That brings our conference to an end. I wish all of  
6 you good health.

7 MR. WIRSHBA: Thank you, your Honor.

8 MS. SHROFF: Thank you, your Honor.

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